UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Cameron LNG, LLC Docket No. CP02-378-003

ORDER GRANTING MOTION TO INTERVENE OUT OF TIME
AND DENYING REQUEST FOR REHEARING

(Issued July 29, 2005)

1. On May 13, 2005, BG LNG Services, LLC (BGLS) filed a request for rehearing of an April 13, 2005 Order[1] in which the Commission conditionally approved modifications to the docking facilities of a previously authorized liquefied natural gas (LNG) import terminal. BGLS claims that the Commission's environmental review of the modifications was inadequate and incomplete and that the Commission improperly delegated its responsibilities to other federal and local authorities. Additionally, BGLS requests that the Commission recognize it as party to this proceeding.

2. For the reasons discussed below, we will permit BGLS to intervene out of time and will deny BGLS's request for rehearing.

Background

3. In 2003, Cameron, formally Hackberry LNG Terminal, L.L.C. (Hackberry), received authorization under section 3 of the Natural Gas Act (NGA) to construct and operate an LNG terminal near Hackberry, Louisiana, and authorization under NGA section 7 to construct and operate a 35.4-mile long, 36-inch diameter pipeline from the tailgate of the new terminal to the existing facilities of Transcontinental Gas Pipe Line

[1] *Cameron LNG, LLC (Cameron)*, 111 FERC ¶ 61,018 (2005).

Corporation (Transco).[2] The April 13, 2005 Order amended Cameron's existing certificate authorization to allow it to modify docking facilities to accommodate larger LNG ships. Specifically, Cameron received amended authorization (1) to widen and enlarge the approved unloading slip to approximately 2,600 feet in width at the entrance, narrowing to 750 feet at the rear bulkhead wall, with a horizontal dimension depth of approximately 1,325 feet; (2) add an 850-foot-radius turning basin to the slip; and (3) move the eastern edge of the slip an additional 90 feet away from the edge of the channel for a total offset of 250 feet.

BGLS's Request to Intervene Out of Time

4. BGLS reiterates its claim that it is a party to this proceeding by virtue of having been a party to the proceeding in which Hackberry, now Cameron, received initial certificate authorization. In that earlier proceeding,[3] in which we considered the application for a new LNG terminal, BGLS sought, and was granted, intervenor status. On September 11, 2003, we issued an order authorizing the proposed LNG and pipeline facilities. No party requested rehearing of the September 11, 2003 Order. Thus, the record closed and the September 11, 2003 Order constituted final agency action on Cameron's application, concluded the Commission's decision making process, and terminated parties' participation in that initial certificate authorization application proceeding.

5. Thus, when Cameron filed on December 9, 2004, to amend its existing authorization, a new proceeding was initiated in Docket No. CP02-378-002 to review Cameron's proposal to amend its existing authorization. Notice of this new proceeding was published in the *Federal Register* on December 28, 2004,[4] directing persons desiring to intervene in this new proceeding to file in accordance with Rule 214. BGLS did not do

[2] *Cameron*, 104 FERC ¶ 61,269 (2003). A preliminary determination was issued to Hackberry, 101 FERC ¶ 61,294 (2002). Prior to issuance of the final authorizations, Sempra Energy LNG Corporation acquired Hackberry from Dynegy Midstream Services, Limited Partnership, and changed Hackberry's name to Cameron LNG, LLC. On June 27, 2005, Cameron LNG, LLC received approval to abandon, and Cameron Interstate Pipeline was granted authority to acquire, the 35.4-mile pipeline. 111 FERC ¶ 61,490 (2005). Thus, Cameron LNG, LLC now holds NGA section 3 authorization for the LNG terminal facilities, and Cameron Interstate Pipeline, LLC holds NGA section 7 certificate authorization for the pipeline linking the terminal to Transco.

[3] *Hackberry*, 101 FERC ¶ 61,294 (2002) and *Cameron*, 104 FERC ¶ 61,269 (2003).

[4] 69 FR 77,748 (Dec. 28, 2004).

so. Therefore, BGLS is not a party to the proceeding in Docket No. CP02-378-002. Consequently, we affirm our determination in the April 2005 Order that "BGLS is not a party to the proceeding herein because the party status of intervenors terminates when the certificate proceeding before the Commission has been completed, as happened when the September 11, 2003 Order was issued, and the time for judicial review has expired."[5]

6. BGLS alternatively moves to intervene out of time. In ruling on a motion to intervene out of time, we apply the criteria set forth in Rule 214(d),[6] and consider, among other things, whether the movant had good cause for failing to file the motion within the time prescribed, whether the movant's interest is not adequately represented by other parties to the proceeding, whether any disruption to the proceeding might result from permitting the intervention, and whether any prejudice to or additional burdens upon the existing parties might result from permitting the intervention. Late intervention at the early stages of a proceeding generally does not disrupt the proceeding or prejudice the interests of any party. We are therefore more liberal in granting late intervention at the early stages of a proceeding, but are more restrictive as the proceeding nears its end.[7] A petitioner for late intervention bears a higher burden to show good cause for late intervention after issuance of a final order in a proceeding,[8] and generally it is Commission policy is to deny late intervention at the rehearing stage, even when the petitioner claims that the decision establishes a broad policy of general application.[9]

7. Despite not being a party to this proceeding, BGLS participated in this proceeding by submitting comments in opposition to Cameron's proposed project modifications. Further, until we issued our April 2005 Order, BGLS was unaware of its erroneous assumption regarding its party status. Since only a party to this proceeding can request rehearing of the April 2005 Order,[10] denying BGLS's motion to intervene out of time would preclude BGLS from seeking rehearing. Since BGLS's request for rehearing does not raise new issues, we do not believe that granting BGLS's late intervention under

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[5] 111 FERC ¶ 61,018, p. 3, n. 4 (2005).

[6] 18 CFR § 385.214(d) (2005).

[7] *Transok, L.L.C.*, 89 FERC ¶ 61,055 at 61,186 (1999).

[8] *Williston Basin Interstate Pipeline Co. (Williston)*, 31 FERC ¶ 61,045, at 61,076 (1985).

[9] *Williston*, 112 FERC ¶ 61,038, P 12 (2005) and *Williston*, 81 FERC ¶ 61,033, at 61,178 (1997), *citing Transcontinental Gas Pipeline Corp*., 79 FERC ¶ 61,205 (1997).

[10] *See* NGA section 19(b) and 18 CFR 385.713(b) (2005).

these circumstances will unduly delay this proceeding, or unfairly prejudice or burden Cameron or other parties. Accordingly, we will grant BGLS's motion to intervene out of time and respond to its request for rehearing.[11]

BGLS's Request for Rehearing

8. As part of our assessment of Cameron's initial LNG proposal, we prepared an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act of 1969 (NEPA).[12] As part of our assessment of Cameron's proposal to modify its approved LNG facilities, we prepared an Environmental Assessment (EA), a preliminary document which briefly provides sufficient evidence and analysis for determining whether a proposed project will have no significant impacts. In this case, our EA reached a finding that the proposed facilities' modifications would have no significant impact on the human environment. Accordingly, we found no obligation to conduct an EIS for the proposed modifications.

9. The EA recommended, and the April 2005 Order required, that Cameron (1) resolve with the United States Environmental Protection Agency (EPA) the issue of whether additional testing of dredged material is necessary; (2) submit information to and receive comments from the Louisiana State Historic Preservation Officer regarding cultural resources; and (3) consult with the United States Coast Guard on issues related to ship traffic. BGLS argues that if information is unknown or unavailable when preparing an EA, then an EIS must be completed.[13] BGLS contends that because the EA recommends that additional consultation occur and additional studies be completed, either the EA should not been deemed incomplete until the additional information was available, or an EIS should have been undertaken.

10. BGLS observes that for LNG import terminals, the Commission, the Coast Guard and Department of Transportation have entered into an interagency agreement to

[11] Cameron submitted an answer to BGLS's request for rehearing, as did CITCO Lake Charles jointly with Trunkline LNG Company, LLC. Under Rule 213 of our Rules of Practice and Procedure, answers to rehearing requests are not permitted. However, we have the discretion to waive this rule, and do so here to clarify the issues and ensure a complete and accurate record in this proceeding. Cameron's answer addresses the merits of BGLS's request for rehearing. CITGO Lake Charles and Trunkline LNG Company, LLC summarize several previously submitted scoping comments, including comments of BGLS.

[12] 42 USC § 4321 *et seq.*

[13] C*iting Sierra Club v. Norton,* 207 F. Supp. 2d 1310, 1335-36 (S.D. Ala. 2002).

coordinate the review of safety and security issues, including the NEPA review.[14] BGLS views the Commission's action as inconsistent with this agreement, alleging that before the Coast Guard was provided with an opportunity to provide input, the Commission ended the NEPA process and issued an order.

11. BGLS objects to the mitigation conditions specified in the EA and adopted in the April 2005 Order as being "too vague, speculative, and insufficiently enforceable to support the conclusion that the impacts would not be significant even with the implementation of the measures."[15] BGLS contends that the Commission has improperly delegated its responsibility by deferring the review of environmental impacts to other agencies. BGLS points out that regardless of the competency of these other agencies to review specific impacts, these other agencies lack the authority to order certain potentially necessary mitigation measures. For example, BGLS suggests that the Coast Guard could conclude that mitigation will require Cameron to reconfigure its terminal facilities, but only the Commission, and not the Coast Guard, has the authority to direct Cameron to alter its facilities.

Commission Response

12. We completed an EIS for the initially proposed LNG terminal project, including the take-away pipeline.[16] Our EA in this proceeding is limited to a review of the impacts of Cameron's proposal to modify its docking facilities. The EA relies on and incorporates the results of the previous EIS, and considers how the actions proposed here might affect the findings of the EIS. The EA reviewed the justification for altering the authorized facilities and the impacts of the proposed modifications on soils, wetlands, aquatic resources, fisheries, essential fish habitat, threatened and endangered species, cultural resources, land use, air quality, and noise. BGLS does not question our decision to conduct an EA rather than an EIS,[17] but argues the EA should be treated as incomplete, because the EA acknowledges there is a need for additional information prior to project

[14] *Interagency Agreement Among the Federal Energy Regulatory Commission, United States Coast Guard, and Research and Special Programs Administration for the Safety and Security Review of Waterfront Import/Export Liquefied Natural Gas Facilities* (Feb. 11, 2004).

[15] BGLS's Request for Rehearing, at 16 (May 13, 2005).

[16] The final EIS was issued on August 14, 2003.

[17] *See* 18 CFR §§ 380.5 and 390.6 (2005), describing actions that require an EA and EIS. *See also*, 40 C.F.R §§ 1501.4 (a)-(c), 1508.13 (2005).

approval, and inadequate, because the EA relies on other agencies to mandate mitigation conditions.

13. We find no impropriety in issuing the EA and the April 2005 Order prior to other agencies' completing studies on specific aspects of Cameron's proposed facilities' modifications. The Commission's capability to assess different types of environmental impacts, while extensive, is not infinite. Accordingly, we routinely rely on the expertise of other agencies to evaluate the environmental impacts of proposed projects. It is common practice to issue an order, or EIS, or EA, and find a proposed project may be authorized subject to and conditioned on the outcome of ongoing environmental reviews.[18] The validity of this approach was approved under a similar statute in *City of Grapevine, Texas v. DOT*.[19] In that case, the Federal Aviation Administration (FAA) approved a proposed runway before completion of the review process required by the National Historic Preservation Act (NHPA). To ensure compliance with the NHPA, the FAA conditioned its approval of the runway on completion of the NHPA review. The court rejected a challenge to this approach, noting that "because the FAA's approval of the West Runway was expressly conditioned upon completion of the § 106 process, we find here no violation of the NHPA."[20]

14. We do not accept BGLS's view that the EA recommendations for additional consultation and study by other agencies[21] indicate that we acted prematurely in

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[18] *See, e.g., Northwest Pipeline Corporation*, 107 FERC ¶ 61,192 P 38 (2004): "Consistent with long-standing practice, and as authorized by NGA section 7(e), the Commission typically issues certificates for natural gas pipelines subject to conditions that must be satisfied by an applicant or others before the grant of a certificate can be effectuated by constructing and operating the proposed project." [Citation omitted.] These conditions commonly include separate permits and approvals required to be obtained from other federal, state, and local agencies. We have adopted this approach because of our experience "that, in spite of the best efforts of those involved, it may be impossible for an applicant to obtain all approvals necessary to construct and operate a project in advance of the Commission's issuance of its certificate without unduly delaying the project." *Georgia Strait Crossing Pipeline LP*, 107 FERC ¶ 61,065, P 16 (2004).

[19] 17 F.3d 1502 (D.C. Cir. 1994).

[20] *Id.*, at 1509.

[21] The environmental mitigation conditions of the April 2005 order direct Cameron to provide certain information to the Louisiana State Historic Preservation Office and to consult with the Coast Guard, to inform the Commission of the outcome of these efforts, and to obtain Commission approval prior to proceeding with its project.

approving Cameron's modifications. To the contrary, by conditioning Cameron's authorization so that it could not commence construction until the other agencies had completed their review of matters within their particular expertise and purview, we were ensuring that the project would not proceed until there was satisfactory resolution of those remaining factors that could alter our finding that the project, as modified by its proposal in this proceeding, will not have significant environmental impacts. Therefore, it is not appropriate to characterize this as a case of "approve first, study later," as BGLS contends; rather, it is a case where we were presented with sufficient information regarding the proposed action to be able fashion adequate mitigation measures to support a determination that Cameron's modifications to its docking facilities would cause no significant environmental impacts.[22]

15. We do not view this approach as an unwarranted delegation of our responsibilities, because the Commission undertakes its own independent assessment of the other agencies' studies and results prior to accepting or rejecting their recommendations.[23] To the extent any of the pending consultations or studies in this case indicate a need for further review – including, if necessary, an EIS – or indicate a potential for significant adverse environmental impacts, the Director of the Commission's Office of Energy Projects (OEP) will not provide the necessary clearances for commencement of construction.

16. BGLS complains that the mitigation measures in the EA and the April 2005 Order are insufficiently precise to ensure that the project will have no significant environmental impacts. We disagree. The April 2005 Order requires Cameron to be in compliance with environmental mitigation conditions prior to the start of construction, and the mitigation conditions require that specific consultations, modeling, mapping, analyses, and surveys be completed and be approved by the Director of OEP prior to the start of construction. Cameron will be required to comply with the mitigation measures specified in the 2003 and 2005 orders, and with any additional measures we subsequently find appropriate.

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[22] An agency need not prepare an EIS in a case where an EIS is normally required, but may instead issue finding of no significant impact if, based on EA, the agency determines that the proposed action will not significantly affect the environment. *See, e.g., Greenpeace Action v. Franklin*, 14 F.3d 1324 at 1328 (9th Cir. 1992). Or, an agency may condition its decision not to prepare a full EIS on adoption of mitigation measures. *See, e.g., City of Auburn v. United States*, 154 F.3d 1025 at 1033 (9th Cir. 1999).

[23] *See, e.g., Steamboaters v. FERC*, 759 F.2d 1382, 1393 (9th Cir. 1985), describing the Commission's obligation to take a hard look at the potential environment impacts of a proposed action, and to not axiomatically adopt other agencies' recommendations.

17. BGLS focuses on the impact that Cameron's proposed reconfiguration of its docking facilities to accommodate larger ships will have on navigation in the Calcasieu River channel. This was one of the principle concerns addressed in the April 2005 Order, and we relied on the expertise of those most directly affected.[24] Cameron's proposal was supported by the Lake Charles Harbor and Terminal District and the Lake Charles Pilots, Inc. The Coast Guard was unable to complete its review of Cameron's proposed project modifications prior to issuance of the April 2005 Order; consequently, we made the authorization issued in April contingent on the Coast Guard's subsequent approval and the Commission's subsequent adoption of the Coast Guard's conclusions.[25]

18. The Coast Guard has completed its assessment and finds that "the Calcasieu River, from the entrance approach to the proposed Cameron LNG facility, [is] suitable for LNG marine traffic for vessels not larger than a nominal size of 200,000 cubic meters."[26] In addition, the Coast Guard notes the Lake Charles Pilots have endorsed tankers with a length of 1050 feet, a beam of 164 feet, and a draft of 40 feet.[27] Cameron avers that the ships that will make LNG deliveries to its terminal will be within these prescribed

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[24] The impact of the new terminal project on ship traffic has been an issue from the beginning. In the 2003 initial authorization we stated that: "The operation of LNG vessels should have a similar impact as other large vessels currently using the Calcasieu Ship Channel and should cause no more disruption than the vessel traffic increases planned by other Channel users. The final EIS recommended several mitigation measures that would benefit all Channel users and that may reduce some of the current sources of vessel delays." 104 FERC ¶ 61,269, P 26 (2003).

[25] We consider this procedural approach to be consistent with the February 2004 interagency agreement, whereby the Commission and the Coast Guard strive to issue permits concurrently. Note that in our assessment of Cameron's requested amendment, as in our assessment of the initial terminal application, we sought the cooperation and assistance of the Coast Guard in carrying out our statutory and regulatory responsibilities. We did not, as BGLS contends, improperly delegate our responsibilities to the Coast Guard or any other agency. Given that the Coast Guard has authority over navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety of facilities or equipment located in or adjacent to navigable waters, Cameron's LNG terminal could not be placed in service without the approval and operational oversight of the Coast Guard.

[26] The Coast Guard's April 27, 2005 Waterway Suitability Assessment for Cameron LNG, at 1 (May 11, 2005).

[27] *See* the Coast Guard's May 5, 2005 Letter of Recommendation, included as part of Cameron's comments of May 25, 2005.

dimensions. After consideration of the Coast Guard's assessment of Cameron's proposal and its impact on ship traffic, we will adopt the Coast Guard's position, and will permit Cameron to reconfigure its facilities as requested.

The Commission orders:

(A) BGLS's request for rehearing is denied, for the reasons stated in the body of this order.

(B) BGLS's request to intervene out of time is granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.